

37 Am. Jur. 2d Fraud and Deceit § 81

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Fraud and Deceit

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IV. False Representations

B. Necessity that Representation Be of Fact; Opinions

4. Commendatory Trade Talk; Promotion and “Puffery”

§ 81. Exceptions to rule of nonliability; distinction between deceptive representation and “puffing”

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West’s Key Number Digest

West’s Key Number Digest, [Fraud](#)  11

A.L.R. Library

[Computer sales and leases: breach of warranty, misrepresentation, or failure of consideration as defense or ground for affirmative relief, 37 A.L.R.4th 110](#)

Trial Strategy

[Misrepresentation in Automobile Sales, 13 Am. Jur. Trials 253](#)

The doctrine of nonresponsibility for mere trade talk has no application to false representations of material facts that are in their nature calculated to deceive and are made with the intent to deceive,¹ particularly where the parties do not stand on an equal footing or have equal means of knowing the truth,² or to representations of value that are made to induce an ignorant person to enter into a contract and upon which he or she relies, to his or her detriment.³ Otherwise stated, the decisive test to determine whether a seller’s statements are mere inactionable puffing is whether the seller asserts a fact of which the buyer is ignorant or merely states an opinion or judgment on a matter of which the seller has no special knowledge and on which the buyer may be expected also to have an opinion and to exercise his or her judgment.⁴

In a plain case of cheating, swindling, or gross duplicity, the rule of caveat emptor should have no application.⁵ Furthermore, it may be safely said that the tendency is to hold a merchant to a fairly strict accountability for representations made in connection with the sale of goods.⁶

CUMULATIVE SUPPLEMENT

Cases:

On charge of false advertising and consumer confusion under Lanham Act, competitor's claim of "lasting" performance with regard to large tote towel was not non-actionable "blustering" or "boasting," and did not sound like non-actionable "puffery," since it had been stated as fact. Lanham Act, § 43(a), 15 U.S.C.A. § 1125(a). *Hall v. Bed Bath & Beyond, Inc.*, 705 F.3d 1357 (Fed. Cir. 2013).

Statements on prefabricated steel building distributor's website, that it had "zero unresolved customer issues" and "a history of 100% customer satisfaction" were not mere puffery, and thus were actionable as false advertising, as they were specific, measurable claims that could be evaluated as true or false. *General Steel Domestic Sales, LLC v. Chumley*, 129 F. Supp. 3d 1158 (D. Colo. 2015).

[END OF SUPPLEMENT]

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Footnotes

- ¹ *Harris v. Rosenberger*, 145 F. 449 (C.C.A. 8th Cir. 1906); *Weitzel v. Jukich*, 73 Idaho 301, 251 P.2d 542 (1952); *Hogan v. McCombs Bros.*, 190 Iowa 650, 180 N.W. 770 (1921).
- ² *Bethlahmy v. Bechtel*, 91 Idaho 55, 415 P.2d 698 (1966); *Weitzel v. Jukich*, 73 Idaho 301, 251 P.2d 542 (1952).
- ³ *Landis v. Rodgers*, 1926 OK 735, 119 Okla. 233, 249 P. 398 (1926).
- ⁴ *Helena Chemical Co. v. Wilkins*, 18 S.W.3d 744 (Tex. App. San Antonio 2000), judgment aff'd, 47 S.W.3d 486 (Tex. 2001).
- ⁵ *Fourth Nat. Bank v. Webb*, 131 Kan. 167, 290 P. 1, 71 A.L.R. 619 (1930).
- ⁶ *Hogan v. McCombs Bros.*, 190 Iowa 650, 180 N.W. 770 (1921); *Bell v. Bradshaw*, 342 S.W.2d 185 (Tex. Civ. App. Dallas 1960).